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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (CLOSED)**
OF THE 1063rd MEETING

Held at Headquarters, New York,
on Friday, 12 April 1991, at 10.00 a.m.

Chairman: Mr. POCAR

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* All persons handling this document are requested to respect and observe its confidential nature.

** The summary record of the second part (public) of the meeting appears as document CCPR/C/SR.1063/Add.1.

N.B. This record is subject to correction. Participants wishing to submit corrections during the session of the Committee are asked to hand them, in typewritten form, to the Secretary of the Committee. A consolidated corrigendum of the summary records covering the closed meetings of the Committe will be issued shortly after the session.

The meeting was called to order at 10.35 a.m.

CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE COVENANT (continued)

Communication No. 427/1990 (CCPR/C/WG/SPR/41/DR/427/1990)

1. Mrs. HIGGINS, speaking as Special Rapporteur for New Communications, said that she had been instructed to make recommendations directly to the Committee in cases where a communication seemed clearly inadmissible by virtue of article 2 or article 3 of the Optional Protocol. That seemed to be the case with the communication under consideration, in which an Austrian citizen claimed to be a victim of violations under articles 7, 17, 23 and 26 of the International Covenant on Civil and Political Rights (para. 1). The author, a university professor, claimed that the mayor of a town in the District of Lower Austria had no legal grounds for refusing to grant him a building permit (paras. 2.1 and 2.5). He alleged that the refusal constituted "harassment", had caused "psychological terror" and had been detrimental to his family's well-being (para. 3.3). His claims of attacks on his honour and degrading treatment (para. 4.3) appeared to be insufficiently substantiated for purposes of admissibility. He might have had a valid claim concerning the court expenses he had incurred, but that was not mentioned in the communication. She therefore recommended to the Committee that it should find the communication inadmissible under article 2 of the Optional Protocol. However, if Committee members wished to consider it further, it could be taken up at the July 1991 meeting of the Working Group on Communications.

2. Mr. SADI agreed with Mrs. Higgins and suggested that the section of the recommendations headed "complaint" should precede the section headed "Background" in line with the format decided on by the Committee.

3. Mr. EL-SHAFEI noted that paragraph 4.3 indeed dealt with the substance of the allegation.

4. Mr. PRADO VALLEJO noted that the communication was dated 20 September 1990 and was not urgent. Surely, consideration of such a recent communication could be deferred to the meeting of the Working Group.

5. Mr. WENNERGREN referred to article 17 (1) of the Covenant concerning protection against interference with privacy and family and attacks on reputation, and said that, in his country, it was not unusual for provincial authorities to resort to such means in an attempt to humiliate residents of the capital. In that light, he proposed that the Committee should consider whether article 17 of the Covenant had been violated.

6. Mrs. HIGGINS said that if Mr. Wennergren and a number of other Committee members had reservations, the communication should be taken up at the Working Group meeting rather than declared inadmissible. Responding to Mr. El-Shafei,

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she said that the substance of the allegations was referred to in the recommendation solely for purposes of determining admissibility.

7. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to defer a decision on admissibility and refer the recommendation to the meeting of the Working Group on Communications in July 1991.

8. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS

Mandate of the Special Rapporteur for New Communications (CCPR/C/SPR/41/MISC.5)

9. Mrs. HIGGINS, speaking as Special Rapporteur for New Communciations, said that a paper recapitulating the decisions taken by the Committee on the powers of the Special Rapporteur had been prepared for the benefit of her successor and had been circulated to members. She drew attention, in particular, to the outstanding issues set forth in the final paragraph of the paper (CCPR/C/SPR/41/MISC.5), namely: (a) whether the Special Rapporteur could recommend inadmissibility based exclusively on non-substantiation (article 2 of the Optional Protocol), which had been illustrated by the communication just considered; (b) whether the Special Rapporteur could recommend inadmissibility in clear-cut cases of non-exhaustion of domestic remedies (article 5 (2) (6) of the Optional Protocol; (c) whether the Special Rapporteur could recommend inadmissibility if the case had been submitted to another instance of international investigation on settlement, (such as the Inter-American Commission on Human Rights) (article 5 (2) (a) of the Optional Protocol); and (d) whether the Special Rapporteur could issue a request under rule 86 in cases which did not involve capital punishment, or deny interim protection under rule 86 in such cases.

10. A decision on issue (d) had to be taken urgently as the author of a communication had petitioned the Special Rapporteur to issue a request under rule 86 of the rules of procedure in a case which did not involve capital punishment. It was not clear whether the Special Rapportuer was competent to do that. Thus far, she had handled the situation by communicating with the State party, but she might require further instructions from the Committee and more important, guidelines were needed for the longer term. At issue was whether an author's rights would be irrevocably harmed unless a State suspended certain practices until his case could be heard.

11. Mr. PRADO VALLEJO said that the Special Rapporteur should be authorized to grant protection under rule 86 of the Committee's rules of procedure but should not be able to deny such protection without consulting the Committee.

12. Mr. MAVROMMATIS recalled that rule 86, which had given rise to considerable discussion before its adoption, was customarily invoked in two cases: capital punishment or endangerment of a prisoner's health where a

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doctor's opinion was required. There was no reason why the Special Rapporteur should not be autorized to grant or deny protection under rule 86 as long as it was invoked sparingly and in the prpoer circumstances. Replying to Mr. Prado Vallejo, he stressed that the Special Rapporteur's denial simply meant that the issue would be taken up by the Committee as a whole at a later stage.

13. Mrs. HIGGINS reiterated that it was a sensitive matter for an individual, to instruct a Government, in the name of the Committee, to refrain from adopting legislation. In that light, she proposed that the Special Rapportuer should be empowered to issue requests or denials under rule 86, but should also be required, in so doing, to consult the Chairman of the Committee and report all decisions to Committee members.

14. Mr. SADI expressed concern that rule 86 might be ultra vires. It would be prudent to qualify the very broad category of "cases which did not involve capital punishment", perhaps in consultation with the Chairman and the other officers of the Committee.

15. Mr. EL-SHAFEI said that issues (b) and (c) were clearly within the Special Rapporteur's mandate. Referring to issue (a), he said that input from other Committee members might be useful to the Special Rapporteur in recommending inadmissibility based exclusively on non-substantiation. He would appreciate additional examples of cases which did not involve capital punishment where rule 86 was applicable. Thus far, the only example had been given by Mr. Mavrommatis.

16. Ms. CHANET, referring to issue (a), said that the term "bien-fondé" in the French version implied powers which exceeded the mandate of the Special Rapporteur. The Special Rapporteur should not be required to decide on the admissibility of a communication based on the substantiation of allegations, considering that the Committee itself reached agreement only after lengthy discussion. In issue (c), the French word "manifestement" did not fully convey the very important concept of "clear-cut" non-exhaustion of remedies. As the Committee was not always aware of all the remedies available in a State party, any decision by the Special Rapporteur in that regard should be based on absolute certainty.

17. Mrs. HIGGINS said that there was absolutely no question of the Special Rapporteur taking decisions with respect to issues (a), (b) and (c) - only of making recommendations to the Committee. The sole question relating to those issues was whether the Special Rapporteur should consult the Working Group first, or, in the interest of time, submit recommendations directly to the Committee.

18. The Special Rapporteur should be authorized to take decisions under rule 86 because, in such situations, urgent action was often required. It was clear that the rule was applied only where a person's safety or rights were

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jeopardized and there did not seem to be any danger of its applications becoming open-ended. The case she had referred to earlier concerned a tract of land used by an indigenous population for animal husbandry which was to be deforested under new legislation adopted by the State party. In that particular instance, she had requested the Government to refrain temporarily from implementing the legislation.

19. Mr. LALLAH said that the Committee had acted under rule 86 in other cases not involving capital punishment, for example, to request medical examinations in cases involving allegations of torture; he was not sure, however, that the rule could be extended so far as to cover requests for delaying the adoption of legislation. The Special Rapporteur's power to issue a request under rule 86 was one which must be exercised with great care and in consultation with the Chairman.

Discontinuation of consideration of cases

20. The CHAIRMAN said it was proposed that the Committee should discontinue consideration of four of the cases before it, and asked the Secretariat to comment on them.

21. Mr. de ZAYAS (Centre for Human Rights) said that in the first of the cases, No. 311/1988, the author had withdrawn his case as he had obtained legal assistance for the purpose of petitioning the Judicial Committee of the Privy Council for special leave to appeal. It was therefore recommended that the Committee should discontinue consideration of the case.

22. It was so decided.

23. Mr. de ZAYAS (Centre for Human Rights) said that in the second case, No. 371/1988, the Secretariat had learned from Amnesty International that the author had been granted a presidential pardon in August 1990 and subsequently released from prison. The Secretariat had addressed two letters to the author, but had received no reply.

24. Mr. SADI suggested that, as no reply had as yet been received, it might be better for the Committee to defer a decision on the matter.

25. Mr. WENNERGREN suggested that Amnesty International might be able to help the Committee establish contact with the author.

26. The CHAIRMAN suggested that the case should be kept on the list and another effort made to contact the author.

27. It was so decided.

28. Mr. de ZAYAS (Centre for Human Rights) said that in the third case, No. 416/1990, the author's counsel, by letter of 17 December 1990, had withdrawn the case from the Committee's consideration. It was therefore recommended that the Committee should discontinue consideration.

29. It was so decided.

30. Mr. de ZAYAS (Centre for Human Rights) said that, in the fourth case, No. 388/1989, it had been learned that the author had died in a prison fire in 1990, and on 14 March 1991 counsel had requested the Committee to discontinue consideration of the case.

31. It was so decided.

32. Mr. EL-SHAFEI, referring to communications concerning Jamaica, asked what progress there was to report in connection with the follow-up to the contact with the Government.

33. The CHAIRMAN said that no reply had so far been received to the Committee's letter, but the Committee had been informed verbally, that the Solicitor-General might wish to be in contact with the Committee at its July session in Geneva. He suggested that the Committee, after receiving the written reply, should write again and request assurances that no executions would be in the meantime carried out in the pending cases.

34. Mrs. HIGGINS supported that suggestion and added that the Committee should also authorize the Chairman to pursue the matter if no reply was received.

35. It was so decided.

The closed meeting rose at 11.25 a.m.